88-1712

No.89-

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF
THE UNITED STATES
OCTOBER TERM, 1988

John J., Judith A. and John E. Reardon,

Petitioners,

--against--

Virginia Reardon, Judges John L. Miller, Samuel Natal, and Albert J. Scarduzio,et al

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FROM THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

John E. Reardon and
For John J. and
Judith A. Reardon
Oakridge Terrace-B33
Runnemede, N.J. 08078

Dated: MARCH 7,1989

Petitioners

Issues/Questions Presented

1. Has the Court of Appealls abused its discretion in this matter? and Has its action amounted to prejudice, pre-disposition to rule and denied due process of law?

2. Can a party who has never been served with the summons and complaint be said to admit to "personal jurisdiction" of a court for due process and other purposes by simply making an appearance and filing an answer in opposition to an appeal? and If this can substitute as service for "personal jurisdiction" purposes, is a plaintiff then permitted the right to default against all non-responding/oposing appellees in the district court?

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Judith A. Reardon

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IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER 1988 TERM

Case No._____

John E. Reardon, et al, Petitioners,

v

Virginia Reardon, et al, Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES.

John E., John J, and Judith A. Reardon, petition this court for a writ of certiorari to review the judgement of the U.S. Court of Appeals for the District of Columbia.

OPINION BELOW

The opinion of the Court of appeals is at pages 1-6 of the appendix. The court found that the lower court errored in dis-

missing a complaint prior to service of the complaint, it found that venue is an issue to be argued in the court of first instance, it found that such arguments may be waived by failure to reply, and it found that the rebutal brief of an appellee who was never served the summons and complaint allows that party to raise issues at the court of appeals as though it were the court of first instance, and that the court granted the appellants arguments of venue and dismissed them from a complaint prior to their being served, without allowing the petitioners their right to argue to the court of first instance to be reviewed by the court of appeals later for possible error and that they obviously concluded they have the power to allow parties to present issues to them to be decided that were not even relevant

the issues presented to the appeals court for review.

Jurisdiction

The judgement of the court of appeals was entered on 12/30/88, therefore, the jurisdiction of this court comes by way of 28 U.S.C. 1254(1).

Constitutional and Statuatory Provisions Involved.

1. F.R.C.P. 4:A party has 20 days to respond to the summons and complaint,and a failure to so timely respond entiles the com-plaining party the right to default.

2. F.R.C.P. 65:A Motion for injunctive relief may not serve as a substitution for service required by rule 4.

putes and issues, to refuse to read Mr. Rear
-don's papers, and to deny the case law on
"parental rights protected under the consti-
tution" by claiming that even though the de
-nials of these rights were "spcifically
stated and stated as being lost by concerted
effort and illegal activity" the courts con
-tinued to claim there was no relief avail-
able and continueing to dismiss all com-
plaints filed. The petitioners filed numer-
ous recusal motions with the courts and
these were denied by the courts then settl-
ing the allegations made against them rath-
er than taking them as true as the law re-
quires. Because the courts continued to ig-
nore the laws, violate the petitioners'
rights and then were protected by the court
of appeals the petitioner felt no option was
available "for the equal protections of

their rights and priviledges" other than to file matters outside the state.

The petitioners filed suit--consistant with the parties and general allegations as those sought to be made in lower court number 87-2823 involving the denial of all parental rights, contact and relationship with his children and to each other,in fact, Mr. Reardon cannot even speak to his children by telephone because Mrs. Reardon has an unlisted number at the apparent approval of the court--alleging that these rights were lost between 7/2/87 and 7/14/87 based upon frauds and other illegal activity and concerted efforts. He alleged that the subsequent hearing was also in violation of due process because the intitial proceedings were fraudulent--i.e. the matter was never a judicial matter as the orders and papers

were rubber stamped by someone other than the judge whose name appeared on them--that the subsequent hearing was without proper jurisdiction as the personal jurisdiction was acquired by the perpetuation of the original fraud which brought Mr. Reardon to court. Given this and the loss of the petitioners relationship due to fraud, extortion , perjury, falsification of court papers, ficticious orders and the use of evidence that involved an issue allready pending in the federal court in cases 86-408 and 87-2823--Mr. Reardon's emotional condition and the cause of that condition--the petitioners filed a motion for a restraining order/injunctive relief. The case was assigned to Judge Revercomb and the court dismissed the entire case for lack of venue and mooted the motion. The court dismissed prior to ser-

vice of the complaint, without prior notice or right to defend. The petitioner appelled on the grounds that the court failed first to determine if it had both subject matter and personal jurisdiction, he abused his authority under the circumstances, and that he mis-applied the law in this case.

The only persons/party(ies) responding to the appeal was the state and it questioned what the basis of jurisdiction was while claiming to argue the propriety of the Judge's order. It arguments strayed from the arguments and issues presented, they presented issues outside the issues presented, it presented issues required to be argued be-fore the court of first instance, and the court of appeals not only acknowledged this latter requirement in their order, they then sanctioned the straying from the issues,

acted as a court of "first instance", and sanctioned and allowed an appellee to be released from a case that had yet to be served with a summons and complaint which deprived the court of personal jurisdiction over the party. In this action,the court has now allowed an appeal notice to "substitute as service of process", it has said that this pro se person is not entitled to the "Liberty interest that appeals processes are designed to grant",that appellees may alter and change the issues to suit their whims and needs and that they may act as a court of first instance to settle matters.

REASONS FOR GRANTING THE WRIT

Point 1

The question here involves the rights

and interests of the Public in the judicial process and legal system. This court found in such cases as Applications of Gault, 87 S.Ct. 1428, "that when an appeal process is implimented as a matter of right within a judicial process, it plays an important role in the insurance of due process and the people then have an interest in that right for protection". To allow the Appeals Court to now substitute its opinion for that of the court of first instance would be to deny the public of the vested interest they were granted by Congress when they established the appeals court. Appeals courts were not implimented as court's of first instance to settle matters, they were established so as t eview the original court's orders to ensure they were not flawed for some legal or constitutional reason. But if the issues

presented are to be argued to the court of first instance, and admitted by the Appeals court, where does any person go to "appeal the APPEALS COURT decision for error"? The only place is this court and there is no right, or vested interest to be entitled to come to this court, as the law is well settled and clear as to how the public may approach this court.

The question cannot even be placed in the context of mere error or wether harm was created,for what if a person has left "foot-age on the splicing table" and was denied oral argument to raise this material. Such material would not be before the court, the court would have to remain blind to it and the public could then be denied of a potentially valid claim because a pro se, untrained person or attorney made a mistake and

the court of appeals had now taken his right to be heard away and to "appeal based upon error". To allow this would be to re-define the statutes and rules of court as establish -ed by Congress and what the powers of each court are. It would be to place the Court above Congress and allow them to alter stat- utes, rules of court and procedures at whim and will. Such a dangerous precedent would surely place the court in a position of Legi -slator, Interpretor, and enforcer. It would place such a court into a position of acting as prosecutor, judge, jury and admin- istrator and this is not proper as it de- prives due process of law. Fisher v Pace, 336 U.S. 155,167. If Congress did not want court's of appeals to review abuses, errors or other such reviewable matters of the low- er court, it would have so established this

in the rule as required by Art. 3 of the U. S. Constitution. But it has not. What error then did the court of appeals reverse when it "found" that the state respondents should not be required to address the issue of ven -ue below? The court specifically stated that such matters are to be presented to the lower court first by the party and is not a matter which may be decided sua sponte by the court.

But more importantly, this court specifically stated in Insurance Co. of Ireland v Compagnie Des Bauxite, 102 S.Ct. 2099, 2103 that before the lower court may decide a matter, it must first determine if it has both subject matter and personal jurisdiction, and that if it is not clearly plead and decided, the court must act sua sponte and dismiss for such. In this case, the ques

-tions of subject matter jurisdiction were never made an issues, argued, defended or de-nied and yet the lower court dismissed this matter when the law clearly says that to dismiss for lack of venue, one must first determine both subject and personal jurisdiction. This is consistant with Compagnie SUPRA. There was no such finding and there was a dismissal anyway. But more importantly, Congress clearly states in the rules of court, F.R.C.P. 65 that motion for injunctive relief cannot act as a substitution for service of the summons and complaint. If this is the case, and the matter was dismissed prior to srvice process, how could either court acquire "personal jurisdiction" over any party when the clear statuatory process established by congress and the rules of court were never accomplished? Does

this not run contrary to the intent of Congress' desire and intent? Does this not vio-late the principle established by this court in Leeper v Texas, 139 U.S. 439 when it found "that in order to satisfy the requirements of due process, they must be incorporated into the statutes"? If process no longer requires service of the summons and complaint, can the failure to respond to an appeal now act as a grounds for granting default? If service process is no longer required, and opportunity to defend/respond is granted and the parties refuse and waive such right, can this new substitution method grant the similar right/priviledge/interest to the complaining party as it does for the defending party?

The questions should be clear at this point. Process has a certain procedural nat-

ure established by Congress in order for any court to acquire jurisdiction over the part -ies. This process has been altered and changed. The will of Congress has been chang -ed by the Court of Appeals simply at whim with no justifying reason to so change it. In so doing, it has acted as a court of first instance granting favor to the appell- ees by granting them the right to alter the issues for appeal, granting them relief because the petitioner refused to argue the points raised by the petitionees, accepted jurisdiction of parties which were never brought under the personal jurisdiction of the Federal Court to begin with and has changed Congress' intent for process in civ- il actions. It has clearly abused its power , it has denied these petitioners of the vested interest they have in the right to

use the appeals court for the purpose it was intended and established for and it has failed to accept the limits of its "jurisdic -tional" power when it granted relief to a party for which the court never had personal jurisdiction over.

Point 2

The question here has allready been touched upon. Compagnie SUPRA, Rule 65 of the F.R.C.P., as well as Rule 4, all make it quite clear that a case must be dissmissed sua sponte if personal and/or subject matter jurisdiction are lacking. If process is not accomplished, and that process must be accomplished by service of the summons and complaint and by no other means, then if the complaint and summons were never served,

how could the court of appeals or this court accept a "non-party/jurisdictional" person's arguments that are totally inconsistant with the issues presented to the court for review? The question raised by the state was wether or not the court in fact lacked venue. The questions presented by the petition -er were--(1) did the judge have jurisdiction to dismiss for venue. and Did he have power to here the motion, even if to deny till jurisdiction could be settled.; (2) Did the judge therefore abuse his authority un--der the circumstances and (3) was the law mis-applied.

If venue requires the settling of juris -diction, since venue is defined as the place most convenient for the subjects and persons to settle their dispute (s), then without a decision of jurisdiction first,

venue could not be reached. This would also be consistant with Compagnie SUPRA. This dis-missal also violates the principles set and found as per the Appeals court's own deci-sion and as per Tingler v Marshal, 716 F.2d 1109,cert.den. 52 LW 3240. Does not the Pub-lic have a right to default when it so re-quires? Does not default then serve the in-terest of "quickly settling" matters? If a person so choses not to defend is not the common law that a person is entitled to judg-ment as the defaulting party is thus pre-sumed guilty?

But the question is much more difficult here. The question here goes the rights of the public in process of a complaint. If a court of appeals is permitted to establish a substitute method of service--i.e. the ser-vice of the notice of appeal and briefs--

and it can determine that such person is now considered under the personal jurisdiction of the federal court system, and it may act to here and decide matters as a court of first instance, Should not the public then have a vested interest and right to this new method of service/acquiring personal jurisdiction and process to demand default against all parties who have refused to respond, especially when neither the state nor the Court of Appeals has questioned its jur-isdiction of the subject? Should not the complaining party then be entitled to immediate relief from the state orders and to an immediate trial by jury to establish the level of damages against the defaulting part-ies? If process is established to protect the public, and default serves the valid interest for the court to clear its dockets

and a party has a vested interest in such a process when defendants refuse to proceed and defend, and If the Court of Appeals is correct and authorized to change the require-ments of established process to "protect" defendants who respond, should not there be a similar right/interest to the complaining party to now be granted the right to use the process of notice of appeal and service of the appeals brief as "substitution of process" and demand default? How can such an ar-bitraty finding in favor of one party/set of parties without any such similar benefit to the other party(ies) be justified? What rational purpose does this disparate action which runs contrary to the well settled law and the intent of due process and statuatory process serve? Why is it that "trained professionals" are the ones given every leeway

and consideration and break while this pro se person is denied even the most humblest of equal consideration? How can process be changed to protect a defendant if it cannot be changed to grant a similar consideration to an untrained proffessional when the well settled law is that such untrained profes-sionals are the ones to be granted every lee way? Is the court system full of incompe-tant attorney's? Maybe pro se's should be permitted to replace representation of people? If they cannot be granted leeway, they must know more than the lawyers and it is they who must be the truely "untrained"?

There is no question that there is a public concern here. Either process must be accomplished and complied with as Congress has established, or, if the Appeals court is authorized to derive alternative methods

to substitute for such process, this substitution must be enforced uniformly against all parties of the individual matter or there is disparate treatment or a disparate action that occurs without any justifiable grounds. There is no "rational" purpose to say that the court of appeals may acquire personal jurisdiction to settle issues for one party, when personal jurisdiction is absent,without so saying for the complaining party. If the venue questions could be waived by no response, is not then no response to the appeal the same as default after service since this appeals process is now a substitution for service? There must be a similar right with respect to complaining parties as there is for defending parties or there would appear to arise prejudice, and pre-disposition. Both of these effect jus-

stice and its appearance and is contrary to Offut v U.S. 348 U.S. 11,13-15.

Clearly, either the court of appeals is correct in its right to "alter proper legal process" to acquire jurisdiction, in which case such process must also grant a complaining party the same vested right/interest--as well as the lower court--to have complaints resolved in his/her favor by demanding default against all those who have now failed to timely respond to such "substi-tution of process". Or, the court is wrong, and the court had absolutely no right to allow the state respondents to alter the intent of the issues presented, change the requirements of process, to accept personal jurisdiction over the state respondents, or to rule in their favor and the order of the court of appeals is in error. Clearly, the

review the court of Appeals decision as it applies to proper statuatory, legal and constitutional process of service, jurisdiction, default, the rights of the public under substituted service and whether or not a court of appeals may impliment/create a substitution for service of the summons and complaint.

Dated: March 6, 1989

John E. Reardon

John E. Reardon for
The petitioners.

PETITION FOR WRIT OF CERTIORARI

CASE NO._____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1988

John E. Reardon, et al, Petioners

v

Virginia Reardon, et al, Respondents

APPENDIX

John E., John J. &
Judith A. Reardon,
Oakridge Terrace--B33
Runnemede, N.J. 08078.

UNITED STATES
COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA

NO. 88-7083 SEPTEMBER TERM, 1988

C.A. No. 88-00286

John Reardon, and For Judith A. Reardon and John J. Reardon,

Appellant

v

Virginia Reardon, et al

U.S.Court of Appeals Filed12/30 1988 Constance L. Dupre clerk

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Wald, Chief Judge; Edwards and Williams, Circuit Judges.

JUDGMENT

This case was considered on the record on appeal from an order of the United States District Court for the District of Columbia. The court has determined that the issues

presented occasion no need for a published opinion. See D.C. Cir. Rule 14(c). For the reasons stated in the accompanying memorandum, it is

ORDERED AND ADJUDGED that the district court's order filed February 4, 1988, sua sponte dismisaing appellant's complaint for lack of venue, be affirmed in part and vacat -ed and remanded in part.

The clerk is directed to withold issuance of mandate herein until seven days after dis -position of any timely petitione for rehear -ing. See D.C. Cir. Rule 15.

PER CURIAM

NO. 88-7083 - REARDON V REARDON, ET AL.

MEMORANDUM

Pro se apellant John A. Reardon (Reardon [1]) appeals the District court's order dismissing sua sponte his complaint for lack of venue.

Reardon is a resident of the state of New Jersey as are all of the appellees. Reardon filed and exhaustive civil complaint in the District court seeking to obtain a temporary restraining order against three members of the New Jersey state judiciary and several private citizens. Appellant alleges numerous violations of his constitutional and

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[1] Appellant also seeks to represent his minor children, Judith and John J. Reardon.

federal statuatory rights. After making a finding of improper venue,the district court sua sponte denied Reardon's motion for temporary restraining order and dismissed the complainit.

In Anger v Revco, 791 F.2d 956 (D.C. Cir. 1986) (per curiam), this court held that a district court may not sua sponte dismiss a pro se complaint for lack of venue or person-al jurisdiction. Only a party may raise these claims as affirmative defenses in responsive pleadings. Fed. R. Civ. P. Rule 12 (b), (h)(1). Improper venue and lack of personal jurisdiction are "threshold defense[s] " which "absent timely objection" are deemed to be waived by party. Anger, 791 F.2d at 958. See 28 U.S.C. Sec. 1406 (b); Fed. R. v Civ. P. Rule 12 (h)(1).

In Anger, the court reasoned that vacatur

and remand was proper since due consideration must be given a litigant's pro se status. See Anger, 791 F.2d at 958. See also Haines v Kerner, 404 U.S. 519 (1972). Moreover, the court noted, a defendant could fail to raise either defense. If the defense is not affirmatively plead, it is waived.

Clearly this court would prefer to have the venue issue aired before the district court. Anger, 791 F.2d at 958. Here, however, appellees Samuel D. Natal, John L. Miller and Albert J. Scarduzio have raised the venue issue on appeal. Therefore, it would serve no purpose to remand this portion of the case to the district court. The same is not true of the appellees who failed to file responsive pleadings before this court. Accordingly, we remand that portion of the case to he district court for further pro-

ceedings consistant with Anger.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN E. REARDON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v	)	C.A. No. 88-0286
	)	Filed
VIRGINIA REARDON, et al.,	)	Feb. 4, 1988
	)	James F. Davey
Defendants.	)	Clerk

ORDER

The Court having reviewed the plaintiffs' complaint and application for a temporary restraining order, and it appearing that ven -ue does not lie in this court because the claim arose in New Jersey and all defendants resdie there, see 28 U.S.C. sec. 1391, it is this 4th day of February, 1988,

ORDERED, that the plaintiffs' application for a temporary restraining order is denied.

FURTHER ORDERED, that this action is dismissed.

GEORGE H. REVERCOMB, JUDGE